

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board met on Tuesday, April 28, 2009 at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 2, Richmond, Virginia 23233.

The following members were present:

F. James Ahlberg
Ronda S. DeSplinter
Kimberly B. Kacani, Vice Chair
Douglas Kleine
R. Lee Merritt
Glenn H. Silver
Scott E. Sterling
Lucia Anna Trigiani, Chair
Katherine E. Waddell

Board members Pamela Coerse and Milton Matthews were not in attendance.

DPOR staff present for all or part of the meeting included:

Jay W. DeBoer, Director
Mark N. Courtney, Deputy Director of LRD
Nick Christner, Deputy Director of CID
Trisha L. Henshaw, Executive Director
Heather Gillespie, Ombudsman
Doug Schroder, Director of Adjudication
Ann-Marie Brigil, Hearing Officer
Thomas K. Perry, Property Registration Administrator
Betty C. Jones, Administrative Assistant
Earlyne Perkins, Legal Analyst

Steven Jack from the Office of the Attorney General was present.

Ms. Trigiani, Chair, called the meeting to order at 9:41 a.m.

Call to Order

Ms. Waddell moved to approve the agenda as amended. Mr. Merritt seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Kleine, Merritt, Silver, Sterling, Trigiani, and Waddell.

Approval of Agenda

Ms. Kacani moved that the Board approve the minutes of the February 12, 2009, meeting. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Merritt, Silver, Sterling, Trigiani, and Waddell. Mr. Kleine abstained from voting in the matter.

Approval of Minutes

Ms. Waddell moved that the Board approve the minutes for the following informal fact-finding conferences:

- March 12, 2009, Informal Fact-Finding Conference
- March 16, 2009, Informal Fact-Finding Conference
- March 19, 2009, Informal Fact-Finding Conference

Ms. Kacani seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Kleine, Merritt, Silver, Sterling, Trigiani, and Waddell.

Ms. Trigiani opened the floor for public comment. No members of the public present requested to speak.

Public Comment Period

Ms. Trigiani transferred the Chair to Ms. Kacani and recused herself from the meeting.

Transfer of Chair

Regarding File Number 2009-02554, Atkinson Realty, Inc., the Board members reviewed the record of the Informal Fact-Finding Conference which consisted of the application file, transcripts and exhibits, and the Summary of the Informal Fact-Finding Conference. Ms. DeSplinter moved to adopt the summary and recommendation of the hearing officer and to approve the application for a provisional license. Ms. Waddell seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Merritt, Silver, and Sterling. Members voting in opposition to the motion were Kleine and Waddell. Ms. Trigiani did not participate in the discussion or vote due to her professional relationship with the applicant.

**Review Files/
File Number 2009-
02554, Atkinson
Realty, Inc.**

Ms. Trigiani returned to the meeting and resumed the position of Chair.

Transfer of Chair

Gary Craig, attorney representing Cambridge Premier Realty, LLC, and Joseph Clotzman were present to address the Board. Mr. Craig concurred with the recommendation of the Board to approve the application for a provisional license. Mr. Clotzman concurred with counsel.

**File Number 2009-
03130, Cambridge
Premier Realty,
LLC**

Regarding File Number 2009-03130, Cambridge Premier Realty, LLC, the Board members reviewed the record of the Informal Fact-Finding

Conference which consisted of the application file, transcripts and exhibits, and the Summary of the Informal Fact-Finding Conference. Ms. Kacani moved to adopt the summary and recommendation of the hearing officer and to approve the application for a provisional license. Mr. Silver seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Kleine, Merritt, Silver, Sterling, Trigiani, and Waddell.

Ms. Kacani recused herself from the meeting due to her professional relationship with the applicant.

File Number 2009-02630, Boone Homes Inc. of Roanoke

Regarding File Number 2009-02630, Boone Homes Inc. of Roanoke, the Board members reviewed the record of the Informal Fact-Finding Conference which consisted of the application file, transcripts and exhibits, and the Summary of the Informal Fact-Finding Conference. Ms. Waddell moved to adopt the summary and recommendation of the hearing officer and to approve the application for a provisional license. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kleine, Merritt, Silver, Sterling, Trigiani, and Waddell. Ms. Kacani did not participate in the discussion or vote.

Pursuant to § 55-382 (B) of the Code of Virginia, the Board has the obligation upon the request of an aggrieved time-share owner to render a determination whether compliance with § 55-375 or § 55-386 has occurred. Based on this provision, the Board was presented with a draft Determination Procedure to be used in these situations. Ms. Gillespie and Mr. Schroder discussed the Determination Procedure and underlying statute. Ms. Kacani made a motion to adopt the Determination Procedure as amended and with the deletion of steps 5 through 8. Mr. Merritt seconded the motion.

**Determination/
Discussion of
Determination
Procedure Pursuant
to § 55-382(B)**

Mr. Silver offered a friendly amendment to the motion to have staff request documentation from the developer regarding the request for determination, contingent upon it being provided in time sufficient to meet the 120-day requirement in the statute. Mr. Sterling seconded the motion which was approved by: Merritt, Silver and DeSplinter. Members voting in opposition to the motion were: Ahlberg, Sterling, Kacani, Kleine, and Waddell. The motion failed.

After lengthy discussion, Ms. Kacani restated the original motion to adopt the procedure as proposed by staff with the omission of the last four steps, which did not relate directly to making a determination. Mr. Merritt seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Kleine, Merritt, Silver, Sterling, Trigiani, and Waddell.

Considering the matter of File Number 2009-01728, Board and Roger and Beverly Burchett, Ms. DeSplinter moved that the Board cannot make a determination of compliance with §55-375. Ms. Waddell seconded the motion.

**Review of
Determination
Record: File
Number 2009-01728
Roger and Beverly
Burchett v.
Alexander
Properties**

Mr. Silver offered an amendment to the motion that no determination of compliance with § 55-375 can be made due to insufficient evidence of compliance. Mr. Sterling seconded the motion which was approved by: Silver and DeSplinter. Members voting in opposition to the motion were: Ahlberg, Kacani, Kleine, and Waddell. Members abstaining from voting were: Sterling and Merritt. This motion failed.

After further discussion, the Board members voted on Ms. DeSplinter's original motion, that the Board cannot make a determination of compliance with § 55-375 of the Code of Virginia. Ms. Waddell seconded the motion which was approved by: Ahlberg, DeSplinter, Kacani, Kleine, Silver, Sterling, Trigiani, and Waddell. Member voting in opposition to the motion was Mr. Merritt.

Mr. Kleine then moved to refer the file to the Compliance and Investigations Division for investigation. Ms. Kacani seconded the motion, which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Kleine, Merritt, Silver, Sterling, Trigiani, and Waddell.

The Board recessed for lunch from 12:13 p.m. to 1:04 p.m.

Lunch

Ms. Henshaw gave an update on the regulatory review processes.

**Regulations/Update
on Regulatory
Review Processes**

- The permanent Common Interest Community Manager Regulations are currently undergoing review by the Secretary's office. These regulations should be published in the near future.
- The Common Interest Community Management Information Fund Regulations (fast-track) has been published by the Registrar's Office. These regulations should be effective May 15, 2009. A notice of the changes will be mailed with the association renewal forms.
- The Common Interest Community Ombudsman Regulations are in the Notice of Intended Regulatory Action (NOIRA) stage. A NOIRA was published by the Registrar's office. The 30-day public comment period ends on May 13, 2009.
- The permanent Condominium Regulations are still undergoing review by the Department of Planning and Budget.

Ms. Henshaw indicated that as a result of SB 1143, there was no need to

Withdrawal of

further pursue the Condominium Regulations via the standard process. SB 1143 redefined “board” to mean the Common Interest Community Board instead of the Real Estate Board. Therefore, the Condominium Regulations could now be transferred in their entirety by exempt action. Ms. Kacani made a motion to authorize the staff to withdraw the condominium regulations currently going through the standard process and to proceed with filing for an exempt action to adopt the Condominium Regulations. Mr. Silver seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Kleine, Merritt, Silver, Sterling, Trigiani, and Waddell.

**Condominium
Regulations
(Standard Process)
and Approve
Exempt Action for
Condominium
Regulations**

Ms. Henshaw provided an update on the Ombudsman Regulatory Review Committee. The Committee is composed of board members as well as public members that will serve on the Committee.

**Discuss
Ombudsman
Regulations/
Regulatory Review
Committee, Version
2.0**

The members of the Ombudsman Regulatory Review Committee are:

Milton W. Matthews, Chair
Ronda S. DeSplinter
Katherine E. Waddell
Prudence Bachmann
Thomas F. Burrell, III
Coleen Kenah-Hilland
William A. Marr
William Bradley Mason
Lucia Anna Trigiani (Ex-Officio member)

The first Committee meeting is scheduled for June 11, 2009. The initial meeting will primarily discuss and develop a time-line and prepare an outline to begin the process of drafting the Ombudsman Regulations.

As requested at the February 12th Board meeting, the Board was provided with the Association Disclosure Packet Notice. The Board members agreed by consensus to review the Notice and submit any comments to Ms. Henshaw for discussion at the July 21, 2009, meeting.

**Other Business/
Discussion of
Association
Disclosure Packet
Notice**

As requested at the February 12th Board meeting, the Board discussed the Condominium Advisory Committee as referenced in the Condominium Regulations. After discussion, the Board agreed by consensus to form such a committee at some point in the future should the need arise, but not to select a standing committee at this time.

**Discussion of
Condominium
Advisory Committee**

Mr. Perry discussed the meaning of the term “Substantial Completion” as used in § 55-79.58 (A) of the Code of Virginia and 18 VAC 48-20-

**Discussion of
Meaning of**

310 and 18 VAC 48-20-320 (B) and (C) of the Condominium Regulations. A number of inquiries have been received regarding at what point a project/unit is deemed to be substantially complete. As it is an undefined term, Ms. Trigiani stated that she will look at the Uniform Statewide Building Code and provide her findings at the next Board meeting.

“Substantial Completion”

Ms. Gillespie provided a report on the activities of the Office of the Common Interest Community Ombudsman, including statistical information on complaints filed with the Ombudsman’s office.

Ombudsman’s Report

Ms. Gillespie and Mr. Christner brought before the Board some issues the Ombudsman’s Office was having related to the filing of complaints. It seems there are a number of requests for reconsideration. Some of the concerns are: not happy with the decision of the Board; complaints that are on-going; complaints demanding some action be taken; non-responsiveness; revisiting the same complaint; and numerous e-mail exchanges that consume considerable time. The Board agreed that the regulations may address some of these issues, and should be drafted with these concerns in mind, and offered the Board’s full support in dealing with these issues.

Ms. Henshaw provided statistical information on common interest community applications and licenses, including the number of new applications filed, percentage of applications received, current regulations, and the percentage of regulant population for March 2009.

Licensing/Registration Statistics

Ms. Henshaw notified the Board that she will not be at the July 21, 2009, meeting and will be out of the office from July through September. Mr. Perry will be sitting in for Ms. Henshaw at the Board meeting and the Committee meeting.

The Board discussed strategies for ensuring that all associations and managers that should be registered/licensed obtain such registration/licensure from the Board. Ms. Trigiani stated that there are a number of associations that are not registered by the Board but should be.

Ms. Henshaw advised the Board members that the common interest community managers are available on the license look-up page of the Department’s website.

The Board was provided with the most recent financial statement for informational purposes.

Board Financial Statements

The Board previously requested that staff compile a calendar of the common interest community-related events and dates that staff and the Ombudsman's office attends. The requested information was provided to the Board with the agenda package for information purposes only.

**Staff Event
Calendar**

The Board deferred adoption of the 2010 proposed meeting schedule to its July 21, 2009, meeting. The Board suggested having the meetings on a Tuesday or Thursday.

**2010 Proposed
Meeting Schedule**

The Board members serving on the Board were reminded to complete their conflict of interest forms and travel vouchers.

**Conflict of Interest
and Travel Voucher
Forms**

There being no further business, the meeting was adjourned at 3:15 p.m.

Adjourn

Lucia Anna Trigiani, Chair

Jay W. DeBoer, Secretary